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Supreme Court of the United States

OCTOBER TERM, 1966

No. 1330

GRACE LINE, INC. and S. S. SANTA LUISA,

Petitioners,

against

JOSEPH SCOPAZ and MILES PEROS,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Opinions Below

The decisions of the United States District Court for the Southern District of New York are not officially reported. They are set forth at pages 12a-13a and 33a-34a of the Appendix of the Court of Appeals. The opinion of the Court of Appeals is reported at 372 Fed. 2d 403, and also appears at pages 82a-89a of the aforesaid Appendix; also in the Appendix to the Petition herein at pages 1a-8a.

Jurisdiction

The jurisdictional requisites are sufficiently set forth in the petition.

Question Presented

There is one basic and fundamental question presented: whether a longshoreman, in the direct employ of a private shipowner operating his own vessel, injured by the

unseaworthiness of the vessel whereon he is performing traditionally seaman-like duties in a cargo operation, can recover damages from such shipowner-employer, in the light of the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

Statute Involved

The pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act are set forth below:

33 U.S.C. Sec. 905:

> "EXCLUSIVENESS OF LIABILITY. Sec. 905. The liability of an employer prescribed in Sec. 904 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this Chapter, or to maintain an action at law, or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee."

The other statutory references (Petition pp. 3 and 4) are not here involved.

Statement

All the material facts herein were stipulated as appears from the opinion of the Court below.

Respondents were longshoremen directly employed as such by petitioner, and were injured in the course of cargo operations as the result of the unseaworthiness of petitioner's vessels. Petitioner was in the dual capacity of employer and owner-operator in control of the vessels.

Petitioner had complied with the provisions of the Longshoremen's and Harbor Workers' Compensation Act and provided benefits pursuant thereto. Pursuant to the stipulations above referred to, provision was made to subtract the amounts of statutory benefits paid from the amounts of the damages as also stipulated.

All parties moved for summary judgment on the agreed facts, and the Court directed judgment for the respondents, holding insufficient the defense that the provisions of the Longshoremen's and Harbor Workers' Act barred recovery of damages.

The Court of Appeals affirmed the judgment of the District Court (Appendix 1a-8a). In so doing, the Court of Appeals stated (p. 6a of Appendix) that

> "This reasoning and the Court's decision in *The Yaka* are clearly dispositive of the question presented to us."

referring to *Reed* v. *The Yaka,* 373 U. S. 410 (1963), at pages 414-415.

Argument

Only one issue is presented. Review by this Court is not warranted.

As will be demonstrated, the decision below was correct and was reached on the authority of this Honorable Court's decision in *Reed* v. *The Yaka,* which the opinion regarded as ". . . clearly dispositive of the question * * *" (p. 6a of Appendix).

Despite petitioner's straining to inject extraneous issues, such as the extent of the sovereign liability of the United States, in both similar and dissimilar situations, such as its liability vis a vis federal prison inmates (in relying upon cases such as *U. S.* v. *Demko,* 350 U. S. 149 (1966)), the issue remains as simply stated above.

It is submitted that petitioner is actually seeking to reargue *Reed* v. *The Yaka, supra,* by the device of raising artificial issues.

Petitioner's suggestion of conflict with the decisions of other Courts of Appeal, or other courts, is the result of erroneous misinterpretation of both the decision below and the other decisions to which petitioner points. The situation remains exactly as described in footnote 7 of the opinion below:

> "We are not alone in our interpretation of the Supreme Court's holding in *The Yaka. Every court that has been asked to apply that decision to facts similar to those presented to us has concluded that Sec. 5 of the Longshoremen's Act does not bar a suit against the shipowner-employer."* (Emphasis added)

Indeed, since the decision below was handed down, this Court has twice denied petitions for writs of certiorari in cases involving similar facts and the identical question of law where similar results obtained. On February 20, 1967, this Honorable Court denied a petition for rehearing by this very petitioner, Grace Line, Inc., in a suit against Michael J. Kanton, number 830, October Term, 1966, 17 L. Ed. 2d 812. The petition had originally been denied on January 9, 1967, reported at 17 L. Ed. 2d 548.

Likewise, petition for writ of certiorari in the case of *Pacific Inland Navigation Co.* v. *Course,* number 1000, October Term 1966, was denied on March 13, 1967, reported at 18 L. Ed. 2d 112. Both above cases arose in the Court of Appeals for the Ninth Circuit.

The cases upon which petitioner relies for "conflict" are readily distinguishable. For example, *Alcoa S. S. Company, Inc.* v. *Perez Rodriguez,* decided April 20, 1967 (not yet reported), and cited on page 6 of petition, is a case arising in the Court of Appeals for the 1st Circuit, decided entirely on the basis of Puerto Rican law. Thus at page 7 of the above opinion, it is stated:

> "In any event it is clear that in the present case we need not determine the exact scope of the *Yaka* decision."

Such case avails petitioner nothing to demonstrate "conflict" for the opinion disqualifies itself as inapplicable to the issue presented here. It was decided on the basis that Congress has never taken action to make the general maritime law of unseaworthiness applicable to Puerto Rico. See *Fonseca* v. *Prann,* 282 F. 2d 153, cert. den. 365 U. S. 860, *Rodriguez* v. *Waterman,* 290 F. 2d 175.

The weakness of petitioner's argument is perhaps most apparent in its citation of *Jackson* v. *Lykes Bros. S. S. Co.,* No. 575, October Term, 1966, wherein this Honorable Court granted a petition for a writ of certiorari to review a decision by the Supreme Court of Louisiana. In one breath, petitioner puts this case in the forefront of its argument concerning the importance of the question raised here. In the next breath, petitioner itself states at page 6:

> "However, that case (Jackson v. Lykes Bros. S. S. Co.) may not resolve some of the questions involved here concerning the extent of the liability of an actual shipowner for injuries to a longshoreman resulting from the breach of the warranty of seaworthiness in an admiralty suit brought in personam as well as in rem."

To petitioner's concession that the *Jackson* case may not resolve some of the questions presented here, we add further considerations demonstrating that the case does not support the grant of the relief petitioner seeks.

First, the *Jackson* case, *supra,* contained an alternative prayer for relief under the Jones Act, which is not involved here at all. For aught that has yet appeared, the summary dismissal by the State Court of the Jones Act prayer, standing alone, might well support the granting of a petition for certiorari. Next, the *Jackson* case, *supra,* is in accord with the opinion of the Court below in the case at bar to the extent that Jackson does recognize the right of a longshoreman to bring an action in admiralty in rem against his employer's vessel for injuries sustained by reason of its unseaworthiness. Thus in this respect, there is not only no conflict, there is express agreement. Moreover, the opinion of the Court below in the cases at bar negated any merit in the distinction attempted in Jackson between a suit in rem and one in personam, in determining the issue presented.

At page 7a the opinion below stated:

> "Nor do we see any merit in the attempted distinction that Reed did not sue his employer *in personam,* but rather brought an *in rem* action against *The* YAKA. The Supreme Court determined that Reed 'was not barred by the Longshoremen's Act from relying on *Pan-Atlantic's liability as a shipowner for the* YAKA's *unseaworthiness* in order to support his libel in rem against the vessel.' 373 U. S. at 415-16 (emphasis added). Thus, the crux of the opinion in *The* YAKA was the employer's *in personam* liability to its employees."

We will not dignify petitioner's arguments by way of analogy wherein it relies upon cases dealing with sovereign immunity among its reasons for granting certiorari herein. We agree with the Court below in stating, as it did in its footnote 6, that the considerations are quite different when the government is involved rather than a private individual.

Respectfully we repudiate the charge that the Court below overlooked this Honorable Court's decision in *Italia Soc.* v.

Oregon Stevedoring Co., 376 U. S. 315 (1964). Said case was called to the attention of the Court by both sides in their briefs, and the case does not involve the question here presented, but only the question as to the scope of the implied warranty of workmanlike service as between a stevedore and a shipowner.

It is not alone our position but that of the Court below that *Reed* v. *The YAKA, supra,* disposes of the issues here presented. It disposes of petitioner's efforts to distinguish the case at bar from cases involving three parties, on which point it concludes its petition. After rejecting any notion that the result in *Reed* v. *The YAKA, supra,* was predicated upon a three party and indemnity basis, the Court below states, in unequivocal language responsive to the instant issue, at page 7a of the Appendix herein:

> "* * * Thus, it is clear that Reed's right to sue Pan-Atlantic (his employer and owner *pro hac vice*), was not based on any hypothesis that Pan-Atlantic had a duty to indemnify Waterman, if the latter were liable because of the ship's unseaworthy condition. 'The only question,' the Court stated, 'is whether the Longshoremen's Act prevents recovery by petitioner for Pan-Atlantic's breach of *its* warranty of seaworthiness.' 373 U. S. at 412 (emphasis added). In the clearest terms the Court concluded that Section 5 of the Longshoremen's Act did not prevent an employee from suing his employer for breach of the warranty of seaworthiness, when his employer was also the owner of the vessel."

Underlying all the foregoing considerations, we urge that the issue presented is necessarily limited to longshoremen, directly employed by private shipowners. Even petitioner does not claim that this is a broad group of maritime workers or longshoremen whose rights would be affected; on the contrary, in *Seas Shipping Co.* v. *Sieracki,* 328 U. S. 85 (1946) at page 102, this Court has referred to the in-

stance of the longshoreman directly hired by the shipowner as "presumably rare".

This, then, is a case of a narrow issue confined to a presumably small number of cases, whereon this Court has already spoken determinatively in *Reed* v. *The YAKA, supra,* and twice since denied petitions for certiorari on the same issue.

Its pronouncement has been followed. There is certainly no conflict between the Courts of Appeal or elsewhere. The decision below, carefully interprets this Court's holding; it is eminently correct and fair in that it gives the longshoreman directly employed by a private shipowner the same right to sue for damages for unseaworthiness as is enjoyed by a longshoreman employed by an independent contractor. It prevents a shipowner from altering the nature of his non-delegable duties by a mere contractual device which has been frowned upon since *Seas Shipping Co.* v. *Sieracki,* 328 U. S. 85 (1946).

No valid basis for granting the petition for writ of certiorari has been established.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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